

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

BLUE CHIP CASINO, LLC

Employer/Petitioner

And

Case 25-UC-213218

UNITE HERE LOCAL 1

Union

**DECISION AND ORDER DISMISSING PETITION**

Petitioner seeks to accrete the job classification of Vessel Maintenance Technician (“VMT”) into the existing bargaining unit of employees represented by UNITE HERE Local 1 (Local 1). The Petitioner asserts that there has been substantial change to the VMT position and that the employees in that classification share such a community of interest with the existing bargaining unit that they must be accreted into that unit and cannot stand on their own as a separate unit.

A hearing officer of the Board held a hearing in this matter on February 23, 2018, at which Petitioner appeared; Local 1 did not appear at the hearing. Petitioner submitted a post-hearing brief which has received due consideration. As described below, based on the record and relevant Board cases, I find that the evidence is insufficient to justify accreting the VMTs into the existing bargaining unit and I will therefore dismiss the petition.

A. The Petitioner’s Operations

Petitioner operates a casino and hotel/conference center facility in Michigan City, Indiana. The casino, pursuant to Indiana law at the time it opened, originally had to be a boat that was navigable. However, in 2011 Indiana’s law changed to permit such casinos to be permanently docked and thus they no longer had to be navigable.<sup>1</sup> Since 2011, the casino portion of Petitioner’s facility has been permanently moored to the land-based hotel/conference center portion.

Local 1 is the exclusive representative for a group of about 400 of Petitioner’s 1000 employees. Local 1 has represented those employees since being voluntarily recognized by Petitioner in July 2000. The bargaining unit consists of around thirty different classifications included within the scope of the following definition identified in the collective-bargaining agreement:

---

<sup>1</sup> Although not identified in the record, I take administrative notice of Indiana Public Law 15-2011, approved April 15, 2011, with an effective date of July 1, 2011.

All regular full-time, regular part-time, steady extra and on call or seasonal food and beverage and housekeeping employees employed by Petitioner at its Michigan City, Indiana, facility; BUT EXCLUDING all other employees and all guards, managers, and supervisors as defined by the Act.

The collective-bargaining agreement between Petitioner and Local 1 was in effect from December 21, 2013, through December 31, 2015. The contract was subsequently extended by mutual agreement to last until December 31, 2017.

The VMTs, a classification in existence at the time Petitioner recognized Local 1 as the representative of the above unit, have historically been excluded from the bargaining unit and have not been represented by any other union. During the time that the casino boat was required to be navigable, the VMTs were more heavily involved in maintenance of the casino as a seagoing vessel, such as engine maintenance. However, with the change in state law and the permanent mooring of the casino boat to the land-based structure in 2011, the VMT job duties underwent a change. VMTs still continue to do what Petitioner terms “light maintenance” such as changing air filters and minor plumbing repairs, but the VMTs have gained new custodial duties including trash removal, cleaning vents, and general floor care. VMTs perform their work on the casino boat itself, primarily on the lower deck and in back-of-house areas. According to Petitioner, VMTs now spend a majority of their time performing the more custodial duties as opposed to maintenance duties. The salaries of the VMTs range from \$13 up to \$18 per hour. The VMT classification is maintained in the “Marine Operations” portion of Petitioner’s organizational structure, and they report to one of four Marine Chief Engineers, who in turn report to the Director of Facilities. There are currently eight VMTs employed at the facility.

Based on the record and Petitioner’s argument, the most comparable classification to the VMTs (of the thirty classifications represented by Local 1) is the Custodian.<sup>2</sup> Custodians perform exclusively cleaning functions and are responsible for things such as removing trash, cleaning between the slot machines, sweeping the floors, and cleaning the restrooms. Custodians work on both the casino boat itself as well as in the land-based operations. Custodians earn between \$12.75 and \$15 per hour. The chain of command for Custodians in “Marine Operations” includes one of three Custodial Supervisors, the Guest Service Manager, and ultimately the Director of Facilities; other Custodians may have a separate chain of command through the hotel side of Petitioner’s organization. Petitioner has approximately fifty Custodians.

#### B. Board Law

The Board described the purpose of unit clarification proceedings in *Union Electric Company*, 217 NLRB 666, 667 (1975):

---

<sup>2</sup> The record is largely devoid of details about the remaining bargaining unit classifications, except for a brief discussion of the Housekeepers.

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past.

In *Safeway Stores Inc.*, 256 NLRB 918 (1981), the Board described its test for accretion as requiring that the group to be accreted have “little or no separate group identity” and “have an overwhelming community of interest with the unit.” However, this test is different than the traditional community-of-interest test that the Board applies in deciding appropriate units in initial representation cases. In that context, the Board will certify any unit that is an appropriate unit, even if it is not the most appropriate unit. *Bartlett Collins Company*, 334 NLRB 484 (2001). In the accretion context, however, “[a] group of employees is properly accreted to an existing bargaining unit when they have such a close community of interests with the existing unit that they have no true identity distinct from it.” *NLRB v. St. Regis Paper*, 674 F.2d 104, 107-108 (1<sup>st</sup> Cir. 1982). In determining, under this standard, whether the requisite overwhelming community of interest exists to warrant an accretion, the Board considers many of the same community of interest factors relevant to unit determinations in initial representation cases, including integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange. *E.I. Du Pont de Nemour Inc.*, 341 NLRB 607, 608 (2004); *Compact Video Services*, 284 NLRB 117, 119 (1987). However, as stated in *Du Pont*, the two most important factors—indeed, the two factors that have been identified as critical to an accretion finding—are employee interchange and common day-to-day supervision. *Super Valu Stores*, 283 NLRB 134, 136 (1987), citing *Towne Ford Sales and Town Imports*, 270 NLRB 311, 312 (1984).

However, when a group or classification of employees sought to be added to a unit existed at the time the unit was certified, and these employees had no opportunity to participate in the selection of the bargaining representative, their unit placement raises a question concerning representation and a petition to amend or clarify will be dismissed. *International Silver Company*, 203 NLRB 221 (1973); *AMF Electro Systems Division, AMF Incorporated*, 193 NLRB 1113 (1971); *The Bendix Corporation, Launch Support Division*, 168 NLRB 371 (1968); *Gould-National Batteries, Inc.*, 157 NLRB 679 (1966); see also *United Parcel Service*, 303 NLRB 326, 327 (1991) (there is a “well-established Board principle precluding accretion where the group sought to be accreted has been in existence at the time of recognition or certification, yet not covered in an ensuing contract”) (internal quotations omitted). The rule in cases like the instant one is that the Board will only entertain a unit clarification petition seeking to accrete a historically excluded classification into the unit if the classification has undergone recent, substantial changes. *Kaiser Foundation Hospitals*, 337 NLRB 1061 (2002), citing *Bethlehem Steel Corporation*, 329 NLRB 243, 244 (1999).

Finally, it should be noted that the Board has followed a restrictive policy in finding accretion because it forecloses the employee's basic right to select their bargaining representative. *Towne Ford Sales and Town Imports*, 270 NLRB 311 (1984); *Melbet Jewelry Co. Inc.*, 180 NLRB 107 (1969). *See also Giant Eagle Markets*, 308 NLRB 206 (1992). When disputed employees do not constitute an accretion to a unit represented by a union, the correct procedure to determine the issue of their inclusion is not a UC petition, but a petition pursuant to Section 9(c) of the Act seeking an election. *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993); *Bradford-Robinson Printing Co.*, 193 NLRB 928 (1971); *Roper Corporation Newark Division*, 186 NLRB 437 (1970); *Brockton Taunton Gas Company*, 178 NLRB 404 (1969); *Westinghouse Electric Corporation*, 173 NLRB 310 (1968).

C. Application of Board Law to the Facts of this Case

There is no question that the VMT classification has been in existence since before Local 1 was recognized as the representative for the bargaining unit, and that the VMTs have historically been excluded from the bargaining unit. The question, therefore, is whether the VMTs have undergone recent, substantial changes, *Kaiser*, and whether the VMTs have no separate identity and share an overwhelming community of interest with the existing bargaining unit, *Safeway*. I find that the answer to both of these questions is no.

1. *Recent, Substantial Change*

Prior to 2011, the VMTs were largely involved in the maintenance of the casino boat, its engine, and related operations. However, with the change in state law in 2011 and the permanent mooring of the boat, the VMT classification started handling less of those engine maintenance and similar duties (although they do still do some) and were instead assigned more custodial duties such as cleaning and taking out trash. However, that transition in duties took place more than six years ago and there is no evidence to support a more recent change in duties than that. Petitioner and Local 1 have negotiated at least one new collective-bargaining agreement (2013-2015) and another 2-year extension to that contract, so it cannot be said that the parties have not had an opportunity to address the potential inclusion of the VMT classification. Clearly, the parties have been operating as-is for quite some period of time now and an accretion in these circumstances would just serve to upend the industrial stability that the Board is supposed to promote and deny the VMT employees their Section 7 right to freely choose a bargaining representative. The current Petition is, therefore, not proper and should be dismissed.

2. *Overwhelming Community of Interest*

Petitioner argues that the VMTs share a sufficient community of interest with the existing bargaining unit and therefore accretion is appropriate. Although Petitioner focuses solely on the comparison between VMTs and Custodians (which is only a part of the larger, established bargaining unit), certainly some factors do weigh in favor of finding a community of interest. VMTs and Custodians (as well as the rest of the employees in the bargaining unit, presumably) are integrated and working towards the same common goal of providing a safe and comfortable guest experience, whether they are staying in the hotel, dining in a restaurant, or playing on the

casino floor. There is nothing in the record concerning the VMTs and the remainder of the bargaining unit being subject to a centralized control of management and labor relations although the VMTs ultimately report to the same Director of Facilities that oversees many of the Custodians and some other (but certainly not all) bargaining unit employees. All of the employees work in the same geographic proximity—Petitioner’s casino and hotel/conference center in Michigan City—although some employees work exclusively on the water while others may work on both the water and the land-based areas of the facility (and presumably yet others work exclusively on land).

Other community of interest factors, however, are either neutral or weigh against accreting the VMT classification into the existing bargaining unit. For example, beyond somewhat similar pay scales (both between VMTs and Custodians, as well as between the VMTs and the remainder of the bargaining unit), the record does not reflect the degree to which VMTs share similar terms and conditions of employment such as benefits with other bargaining unit employees. As for specific skills, the VMTs are expected to have a working knowledge of power or manual hand and other tools and a general knowledge of electrical, plumbing, air conditioning, heating, and refrigeration; none of those skills are apparently required for the Custodians or other members of the bargaining unit.<sup>3</sup> While the VMTs and Custodians do share some common job functions, such as cleaning, substantial differences do remain between the two classifications with the VMTs handling maintenance and inspection duties that the Custodians do not. Even the tools utilized by the two classifications for the cleaning duties can be different since the VMTs do not utilize vacuums or extractors like the Custodians do. And while the VMTs and Custodians share a common time clock and utilize the same storage area for their cleaning supplies, they actually share a relatively small percentage of their time actually interacting face-to-face; as it was described by Petitioner’s own witness at the hearing: “they are doing similar things just in different locations.”

Finally, the two most important factors that the Board has identified to establish an overwhelming community of interest—employee interchange and common day-to-day supervision—weigh against accretion. The only witness at the hearing testified that he *thought* Custodians had previously transferred into the VMT ranks, but he could not recall any specific instances.<sup>4</sup> He also reported that one VMT had “recently” put in a request to transfer to a Custodian position, but the record does not establish when that occurred or if the request was even granted. Nor does the record establish interchange between VMTs and any of the other thirty bargaining unit classifications. But perhaps most fatal to Petitioner’s argument is the lack of day-to-day common supervision, which the Board has deemed a critical factor. The VMTs

---

<sup>3</sup> Although the job descriptions for several classifications, including VMT, were entered into evidence, there were no job descriptions introduced for any of the bargaining unit positions, including the Custodian that is apparently the closest in job duties to the VMTs.

<sup>4</sup> I would note that the witness also believed that six of the current eight VMTs were previously Deckhands (not Custodians), which leads me to believe that there is very little interchange between the VMT and Custodian classifications.

report to one of four Marine Chief Engineers while the Custodians report to one of three Custodial Supervisors (and that does not even take into account the Custodians that may report to supervisors in the hotel side of the operations). One would have to go up two levels above the VMTs and three levels above the Custodians to find a common manager in the Director of Facilities. While the Director of Facilities may, at times, call the VMTs or Custodians directly to give them an assignment, it is clear that the vast majority of the time work assignments are distributed to employees by their immediate supervisors. That does not even take into consideration all of the other bargaining unit employees who may have entirely different reporting structures and not even fall under the auspices of the Director of Facilities at all.<sup>5</sup>

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. Vessel Maintenance Technicians are not appropriately accreted into the existing bargaining unit, clarification of the bargaining unit is not warranted, and the Petition is dismissed.<sup>6</sup>

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **March 21, 2018**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

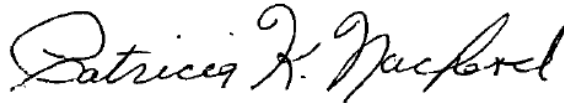
---

<sup>5</sup> In that regard, I would note that the food and beverage employees, and apparently even the Housekeeping employees, do not report through the facilities department.

<sup>6</sup> Petitioner has argued that the VMTs cannot stand alone as a unit unto themselves. Having determined that the VMTs are not properly accreted into the existing bargaining unit represented by Local 1, I do not pass judgment on whether or not the VMTs themselves can constitute an appropriate bargaining unit or must instead be included in a bargaining unit with other classifications that are not currently represented by a union. That analysis raises a question concerning representation that is best preserved for a petition for an election filed under Section 9(c), if and when one should be filed.

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: March 7, 2018

A handwritten signature in cursive script, reading "Patricia K. Nachand".

---

PATRICIA K. NACHAND  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 25  
575 N Pennsylvania St Ste 238  
Indianapolis, IN 46204-1520